IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
SECOND APPEAL NO.346 OF 2005

1. Shivprasad Lingappa Uchale
2. Mohan Ravansiddha Uchale .. Appellant
Orig.Deft.Nos.1 & 2

V/s.

Balu Krishna Kalage .. Respondent
Orig.Plaintiff

Shri N.V. Walawalkar learned Senior Counsel i/b. Shri G.H. Keluskar with Devidas Keluskar for the Appellant
Shri M.S. Karnik learned Advocate for the Respondent

CORAM : S.R. SATHE,J.
DATED : 06/07/2007

ORAL JUDGEMENT :-

1. The Appellant-original defendant Nos. 1 and 2 have preferred this appeal against the judgement and order passed by the Court of Additional District Judge, Sindhudurg-Orus whereby the order passed by the Joint CJJD Kankavali dismissing the Plaintiff's suit for permanent injunction was set aside and defendants-landlords were permanently restrained from obstructing the Plaintiff-tenant from carrying out repairs (which are not in the nature of permanent alterations to the suit premises). For the sake of convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'Defendant'.

2. The brief facts giving rise to this appeal are as under :-

House property bearing Gram Panchayat No.77 (new number-221) situated at Kankavali is owned by Shivprasad Uchale and Mohan Uchale (Original defendants). The said property was in possession of the Plaintiff as tenant at monthly rent of Rs. 25/-. It was leased out for the purpose of storage of tobacco i.e. for being used as godown. The suit premises were in dilapidated condition. Wooden parts of the same were eaten by white ants and there was heavy leakage through roof. As a result of the same, plaintiff-tenant's articles were getting damaged. Naturally, the tenant requested the landlords (present defendants) to carry out the necessary repairs. The tenant even showed willingness to pay more rent. In spite of the same, the defendants-landlords did not carry out any repairs to the suit house. Naturally, the Plaintiff-tenant decided to carry out the repairs at his own cost and for that purpose he called necessary labourers. However, on 19/02/1995, the defendants-landlords obstructed the Plaintiff-tenant from carrying out any repairs or re-

arranging roof tiles. Hence, the tenant filed regular Civil Suit No.32 of 1995 against the landlords for permanent injunction restraining them from obstructing the Plaintiff's activities of repairing suit premises.

3. The landlords-defendants filed their Written Statement at Exh-46 and opposed the suit claim. They contended that Plaintiff-tenant was not paying the rent regularly. They also contended that the suit house was not in dilapidated condition and though there was no need to carry out any repairs, Plaintiff in fact carried out work regarding re-arranging of roof tiles. The defendants also contended that they never obstructed the Plaintiff in carrying out the necessary repairs and the suit be dismissed. On these pleadings the learned Trial Judge framed issues at Exh-50.

4. After considering the evidence adduced by the parties, the learned Trial Judge observed that Plaintiff-tenant has proved that the suit premises required minor repairs and defendants-landlords had even obstructed Plaintiff in carrying out the said repairs. He, however, observed that during the pendency

of the suit the interim injunction was granted and the Plaintiff-tenant has actually carried out the necessary repairs and as such the very purpose of the suit was fulfilled and there was no necessity under the circumstances to grant permanent injunction as prayed by the Plaintiff. The learned Trial Judge, therefore, dismissed the Plaintiff's suit.

5. The Plaintiff-tenant preferred regular Civil Appeal No.157 of 2000 and challenged the order of dismissal of the suit. The learned Additional District Judge after hearing arguments of both the learned Advocates came to the conclusion that there was sufficient evidence to show that there was need to repair the suit premises and defendants-landlords had obstructed the Plaintiff even for carrying out repairs which were necessary. The learned Additional District Judge, therefore, allowed the appeal and issued permanent injunction against the defendants-landlords restraining them from obstructing the Plaintiff-tenant from carrying out repairs of the suit premises.

6. The above mentioned order is challenged by the

Landlords-original defendants in the present second appeal. In this appeal before me the learned Senior Advocate Shri Walawalkar submitted that the learned Additional District Judge has failed to consider the fact that during the pendency of the suit necessary repairs were already carried out and suit had in fact become infructuous and there was no necessity of granting permanent injunction. He, therefore, submitted that order passed by the learned Additional District Judge be set aside and the suit filed by the Plaintiff-tenant for permanent injunction be dismissed. As against this, Shri Karnik, learned Advocate for the Plaintiff-tenant supported the judgement and order passed by the learned Additional District Judge and submitted that no substantial question of law is involved in the present appeal and as such the appeal be dismissed in limine.

7. It is not in dispute that the suit property is owned by the present defendants and the same is taken by Plaintiff at monthly rent of Rs. 25/-. It is also an admitted fact that the defendants-landlords have filed suit for eviction against tenant. It is not in dispute

that roof of the tenanted premises is of earthen tiles and time and again, the tenant-present plaintiff had asked the landlords-defendants to carry out the repairs. There is absolutely nothing on record to show that as per notice of the Plaintiff the defendant had carried out any repairs.

8. From the evidence on record it is very clear that the suit premises are very old and there was need to carry out repairs as there was heavy leakage of water through the earthen tiles of the roof. Admittedly, during the pendency of the suit Court Commissioner was appointed to inspect the suit premises. Accordingly, Court Commissioner inspected the suit premises and submitted his report Exh-37. The said report indicated that there was need to repair the roof of the suit premises. The said Commissioner's report is not disputed by the defendants-landlords. Thus, from the oral evidence of the parties and the Commissioner Report, both the Courts below have in fact held that case of the Plaintiff-tenant that there was need to repair the suit premises was true and correct. The very fact that defendants-landlords are even at this stage

opposing the tenant to carry out the repairs clearly indicates that they are in a way obstructing the Plaintiff-tenant to carry out repairs. Thus, there is concurrent finding of fact that suit premises needed repairs and Plaintiffs were obstructed by the defendant for the same. Naturally, the learned Additional District Judge rightly granted injunction.

9. Thus, it is very clear that no substantial question of law is in fact involved in the present second appeal. Merely because during the pendency of the suit on the basis of interim injunction granted Plaintiff-tenant had carried out certain repairs, it can not be said that the suit had become infructuous. There was reasonable apprehension in the mind of the tenant-plaintiff that even for carrying out minor necessary repairs defendants-landlords would obstruct him. So, considering the said aspect and with a view that the tenant need not rush to the Court every time when it is necessary to carry out minor repairs, the learned Additional District Judge allowed the appeal and passed decree for permanent injunction as mentioned above in favour of Plaintiff-tenant. The said order of

the learned Additional District Judge can not be said to be illegal or incorrect. Nor it can be said that the learned Additional District Judge passed the order of injunction arbitrarily. Thus, it is very clear that there is absolutely no substance in the present appeal.

Hence, appeal is dismissed.

Under the circumstances of the case parties to bear their own costs throughout.

(S.R. SATHE,J.)